Filed 10/27/09 In re T.A. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. T.A., Defendant and Appellant.	E046108 (Super.Ct.No. RIJ116301) OPINION

APPEAL from the Superior Court of Riverside County. Ronald J. Slick, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Gary W. Schons, Assistant Attorney General, and Scott C. Taylor and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

On May 13, 2008, the Riverside County District Attorney filed an amended petition pursuant to Welfare and Institutions Code section 602, alleging that T.A. (minor) committed an assault with a deadly weapon, in violation of Penal Code section 245, subdivision (a)(2)(a),[1] and that he willfully defaced property with graffiti, in violation of section 594, subdivision (b). The petition further alleged a gang enhancement under section 186.22, subdivision (b), for the assault with a deadly weapon charge.

Following a contested jurisdictional hearing on June 12, 2008, the allegations were found true. The minor was declared a ward of the court, placed on probation, and released to the custody of his mother. Minor appeals, contending the evidence was insufficient to support the assault with a deadly weapon charge and the gang enhancement, and the juvenile court erred in setting the maximum term of confinement.

I. PROCEDURAL BACKGROUND AND FACTS

On the evening of April 29, 2008, Gadiel Landa (Victim), Manuel Huizar, Adan Randon, and other friends, went to Villegas Park (also referred to as "Casa Blanca") in Riverside to play soccer. During the soccer game, minor walked onto the playing field with a beer bottle, causing the game to stop.

After the game, as the players were leaving the park, minor came out of a house that was on the corner in front of the park. A group of 15 to 20 males were standing in front of the house watching as minor approached the players leaving the park. Minor,

[1] All further statutory references are to the Penal Code unless otherwise indicated.

who was on a bicycle, rode up to Huizar and told him he was a "Blood." Huizar ignored minor, got into his car, shut the door, and watched minor.

Next, minor approached Landa and his girlfriend as they were walking to their car. Minor began circling around the two and pulled a knife. Landa asked minor what was wrong, and minor said, "I don't want to do it." Minor also told Landa that he could stab him "right now." Landa's girlfriend asked minor to let them go, and minor responded, "you want to get stabbed, too?" Minor then began poking the knife at Landa's backpack, which Landa was carrying over his shoulder, near his stomach.

Huizar drove toward minor to get him away from Landa. Landa and his girlfriend ran to their car. Minor followed and started knocking on the window, telling Landa to get out and "[b]e a man." Huizar testified that minor seemed intoxicated, because he was shaking, trembling and twitching. When asked why he thought that, Huizar said: "His [minor's] speech. The way he looked. His eyes. The way he was acting."

Landa ignored minor, so minor approached Randon with the knife extended. Randon ran toward his car. Next, minor rode towards Landa's brother and his friends. They ran in opposite directions, and minor followed Landa's brother. Landa moved his car between his brother and minor, and minor began circling around Landa's car. Minor then stabbed Landa's tire, dropped his bike, and began running. Landa got out of his car and yelled at minor to drop the knife.

Landa got out of his car and challenged minor to a fight. Minor began chasing Landa's brother again, so Landa backed up his car, ran over minor's bike, and drove

toward a nearby gas station. As Landa left the parking lot, another male made a "gun" with his hand and told Landa he would get him. The males who had been standing in front of the house started "throwing stuff" at the players' cars.

At the same time, Huizar put his car in reverse and hit minor with the back and side of his car, and then hit minor's bike. Huizar then drove out of the parking lot, and one of his friends jumped in the car. Huizar followed minor and watched him run towards the house he came from.[2] Minor walked alongside the house and went in through an opening on the side of the garage.

Detective Miera testified as a gang expert on street gang culture and the nature of Casa Blanca (CB), or CBR. CBR is the umbrella organization for three cliques, including Casa Blanca Evans Street (Evans Street), Casa Blanca First Street (First Street), and the Originales. Evans Street controls the area surrounding Villegas Park, and First Street controls an area nearby. These two groups are rivals, and there is an "imaginary boundary line" that divides the two sides. Evans Street is on friendly terms with the 2800 Block Crips, a gang with a nearby territory. The Originales are neutral and its members do not "align with either side."

[2] Detective Joe Miera, assigned to the Gang Unit of Riverside County Police Department, testified that the house the minor ran to belongs to the Halcon family. Detective Miera stated that Andrew Halcon is a member of the Evans Street clique of the Casa Blanca Riva gang (CBR).

Evans Street has evolved since the 1970's. In April 2008, it had approximately 130 documented members. It uses the number "32" as a symbol[3] and "CB" as a sign. The Evans Street's primary criminal activities include assaults with deadly weapons. Detective Miera has investigated and stopped shootings and robberies by Evans Street gang members. Before the instant offense, minor was an admitted member of Evans Street, and he claimed membership in both Casa Blanca and Casa Blanca Riva. Minor has the word "Casa" tattooed over one set of knuckles and "CB" tattooed on his other set of knuckles.

The detective opined that minor was a member of Evans Street. His opinion was based on (1) having seen minor almost two years prior to the incident in the company of Evans Street gang members wearing CBR-related apparel; (2) a field interview card prepared by another officer that was marked "self-admit" as to CRB affiliation from the same time period; (3) a photograph posted to a "MySpace" Web site at an unknown time where an individual who appeared to be minor displayed CBR hand signs; and (4) the fact that the incident occurred in Evans Street territory.

Detective Miera testified regarding a prior robbery committed by Jesus Lopez, a member of CB, on May 16, 2006. He also testified regarding a prior assault with a deadly weapon committed by Daniel Avila, a member of CBR, in April 2007.

The detective explained how the assault at Villegas Park benefits minor's gang and minor's reputation within the gang. A gang member who commits violent crimes

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[3] "C" is the third letter in the alphabet and "B" is the second letter; thus, "32."

will bolster his membership within the gang. Additionally, violent crimes benefit the gang by showing its violent tendency and thus gain respect in the gang community. Further, assaults at Villegas Park (the gang's "turf") allow the gang to control the area, regulate who goes onto its turf, and instill fear in the community.

II. SUFFICIENT EVIDENCE OF ASSAULT WITH A DEADLY WEAPON

Minor contends there was insufficient evidence to support the juvenile court's finding that he committed an assault with a deadly weapon.

A. Standard of Review

When a criminal defendant challenges the sufficiency of the evidence to support a conviction, the reviewing court examines the evidence to determine whether any rational trier of fact could have found the elements of the offense true beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Substantial evidence is evidence that is "reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Reversal on the ground of insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; accord, *People v. Hughes* (2002) 27 Cal.4th 287, 370.) "'"Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or

falsity of the facts upon which a determination depends. [Citation.]" . . . .' [Citation.]" (*People v. Barnes* (1986) 42 Cal.3d 284, 306.) Moreover, "[a]s part of its task, the trier of fact may believe and accept as true only part of a witness's testimony and disregard the rest. On appeal, we must accept that part of the testimony which supports the judgment. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) The same standard applies in a case where the People rely primarily on circumstantial evidence. (*People v. Bean* (1988) 46 Cal.3d 919, 932.) Moreover, "'[t]he standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]' [Citation.]" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088.)

B. Analysis

Minor contends the evidence fails to establish that he attempted to apply force to Landa's body directly. He claims the evidence shows that, although he was "close enough to stab Landa, he directed his movements toward the backpack instead." Moreover, minor points out there is no case law that holds "that attempting to touch something attached or closely connect to a person—like a backpack—is sufficient to commit a criminal assault without a showing that it was also likely to result in the application of force through the object to the person himself." Likewise, he maintains that he did not use the knife in a manner likely to produce death or great bodily injury. Thus, minor argues, "The fact that [he] had the means of inflicting injury on Landa but did not do so shows that he deliberately refrained from performing an act that would 'probably and directly result in physical force being applied to another.'" He further

argues that his statement ("I can stab you right now") is insufficient to establish a "conditional threat" because there was "no showing that [he] intended this statement to be a conditional threat." We reject his arguments.

"'An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.' [Citation.] Assault requires the willful commission of an act that by its nature will probably and directly result in injury to another (i.e., a battery), and with knowledge of the facts sufficient to establish that the act by its nature will probably and directly result in such injury. [Citation.]" (*People v. Miceli* (2002) 104 Cal.App.4th 256, 269.) Assault with a deadly weapon requires proof of the basic crime of assault, plus proof that it was accomplished by the use of a deadly weapon or with force likely to cause great bodily injury. (CALCRIM No. 875; Pen. Code, § 245, subd. (a).) Assault is a general intent crime that does not require a specific intent to injure the victim or a subjective awareness of the risk that an injury might occur. (*People v. Williams* (2001) 26 Cal.4th 779, 788, 790.) "Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another." (*Id.* at p. 790.)

To prove an assault with a deadly weapon, the People must prove: (1) the defendant did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person; (2) the defendant did the act willfully; (3) when the defendant acted, he was aware of facts that would lead a reasonable person

to realize that his act by its nature would directly and probably result in the application of force to someone; and (4) when the defendant acted, he had the present ability to apply force with a deadly weapon. (CALCRIM No. 875; § 245, subd. (a).) Section 245 "'prohibits an assault by means of force *likely* to produce bodily injury, not the use of force which does in fact produce such injury. While . . . the results of an assault are often highly probative of the amount of force used, they cannot be conclusive.' [Citation.] Great bodily injury is bodily injury which is significant or substantial, not insignificant, trivial or moderate. [Citations.] '"The crime . . . like other assaults may be committed without the infliction of any physical injury, and even though no blow is actually struck. [Citation.] The issue, therefore, is not whether serious injury was caused, but whether the force used was such as would be likely to cause it."' [Citation.]" (*People v. McDaniel* (2008) 159 Cal.App.4th 736, 748.)

Based on minor's assertions, it appears that he is arguing that he lacked the present ability to commit an assault with a deadly weapon because he aimed his knife at Landa's backpack which prevented it from contacting Landa's body. Generally, when a defendant points a loaded gun at the ground or away from the victim, he still may have the "present ability" to cause injury. (*People v. McMakin* (1857) 8 Cal. 547, 548-549; *People v. Thompson* (1949) 93 Cal.App.2d 780, 782.) Also, if the victim obtains a position of temporary safety before the defendant fires his weapon, the defendant still has the "present ability" to cause injury. (*People v. Raviart* (2001) 93 Cal.App.4th 258, 267; *People v. Hunter* (1925) 71 Cal.App. 315, 319.)

In *People v. Valdez* (1985) 175 Cal.App.3d 103 (*Valdez*), the defendant fired bullets at a person protected by bulletproof glass. *Valdez* reviewed a number of authorities discussing "present ability" and stated, "This would be an easier case if California had followed the many jurisdictions which have moved to what Perkins [on Criminal Law (1969) pp. 118-122, 566-572] characterizes as the 'logical position' on the definition of the present ability element of assault. (Perkins on Criminal Law, *op. cit. supra*, p. 121.) Under this modern view, the element of 'present ability' is defined by a subjective test—did the defendant or his intended victim believe he had the ability to inflict injury at the time he made his attempt. In these jurisdictions, either by express statutory language or judicial interpretation, this element has come to require only an '*apparent* present ability' instead of *objective* present ability. . . .

"California, on the other hand, has been committed to an 'old-fashioned' version of criminal assault for at least 93 years. The three essential elements—including 'present ability'—have remained unchanged since the original statute was enacted in 1856. . . . [¶] . . . [¶]

". . . California courts have held attempting to shoot someone with an unloaded gun does not constitute the crime of assault because the perpetrator lacks the 'present ability' to inflict injury. [Citations.] Nor, obviously does threatening someone with a toy gun or candy pistol satisfy this element. [Citation.] On the other hand, a defendant has been held to have a present ability to injure where he is only a moment away from being able to fire his gun. [Citations.] [¶] . . . [¶]

"The real function of this 'present ability' element in common law assault as incorporated in the California statute is to require the perpetrator to have gone beyond the minimal steps involved in an attempt. That is, he must have come closer to inflicting injury than he would have to in order to satisfy the elements of an attempt. . . .

"Thus, because of the 'present ability' element of the offense, to be guilty of assault a defendant must have maneuvered himself into such a location and equipped himself with sufficient means that he appears to be able to strike immediately at his intended victim. . . . The policy justification is apparent. When someone has gone this far he is a greater and more imminent threat to his victim and to the public peace than if he is at an earlier stage of an attempted crime. In contrast, a defendant can be found guilty of an ordinary attempt even if intercepted on his way to a location which would be within striking distance of his intended victim [citation] or while assembling the means to attack this target [citation].

"Nothing suggests this 'present ability' element was incorporated into the common law to excuse defendants from the crime of assault where they have acquired the means to inflict serious injury and positioned themselves within striking distance merely because, unknown to them, external circumstances doom their attack to failure. This proposition would make even less sense where a defendant has actually launched his attack—as in the present case—but failed only because of some unforeseen circumstance which made success impossible. Nor have we found any cases under the California law which compel this result. The decisions holding a defendant lacks 'present ability' when

he tries to shoot someone with an unloaded gun or a toy pistol do not support any such proposition. *In those situations, the defendant has simply failed to equip himself with the personal means to inflict serious injury even if he thought he had.*

"In the instant case, [Valdez] clearly equipped himself with the means to inflict serious injury. Not only was the gun loaded, it proved fully operational when [Valdez] fired off three rounds in the direction of the victim. . . .

"Once a defendant has attained the means and location to strike immediately he has the 'present ability to injure.'" (*Valdez, supra*, 175 Cal.App.3d at pp. 110-113, last italics added; see also, *People v. Licas* (2007) 41 Cal.4th 362, 366-367, 370 [approving *Valdez*; "a necessary requirement of 'present ability' is the *attainment* of the means and location to strike immediately."].)

In this case, the evidence shows that minor equipped himself with the means of inflicting serious injury. The fact that the victim's backpack doomed minor's attack is irrelevant. (*Valdez, supra*, 175 Cal.App.3d 103, 112-113; *People v. Tran* (1996) 47 Cal.App.4th 253, 261 [defendant convicted of assault with deadly weapon where he chased the victims with a knife].) Thus, we conclude that substantial evidence supports the verdict of assault with a deadly weapon.

III. SUFFICIENT EVIDENCE OF GANG ENHANCEMENT

Minor contends there was insufficient evidence to support the juvenile court's finding that he committed the assault with a deadly weapon for the benefit of a criminal street gang.

A. Standard of Review

"The law regarding appellate review of claims challenging the sufficiency of the evidence in the context of gang enhancements is the same as that governing review of sufficiency claims generally. [Citation.] Accordingly, we apply the standard of review outlined . . . [above]." (*People v. Leon* (2008) 161 Cal.App.4th 149, 161.)

B. Analysis

Section 186.22, in relevant part, provides: "'[C]riminal street gang' means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated . . . having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (f).) "'Therefore, the "criminal street gang" component of a gang enhancement requires proof of three essential elements: (1) that there be an "ongoing" association involving three or more participants, having a "common name or common identifying sign or symbol"; (2) that the group has as one of its "primary activities" the commission of one or more specified crimes; and (3) the group's members either separately or as a group "have engaged in a pattern of criminal gang activity." [Citation.]' [Citation.]" (*In re Alexander L.* (2007) 149 Cal.App.4th 605, 610-611 (*Alexander L.*).)

Minor does not attack the first element;[4] however, he maintains that Detective Miera's testimony was insufficient to establish the other two because "[Detective Miera's] testimony about the 'pattern of criminal gang activity' element failed to distinguish Casa Blanca *Evans Street* . . . from two other groups and his testimony about the 'primary activities' element was conclusory." We disagree.

1. Criminal Street Gang

To begin with, minor notes that Detective Miera established the existence of three associations: Evans Street, First Street, and Originales. These three groups emerged from CBR. However, minor complains that the prosecution failed to distinguish among these three groups during key points of Detective Miera's conclusory testimony, and consequently, failed to show that Evans Street satisfied the "pattern of criminal gang activity" element required to prove that it was a criminal street gang. In response, the People argue that this court "should find that the prosecution presented sufficient evidence that the multiple groups which make up CBR were a collective organization

[4] We note that in his opening brief, minor conceded that "Detective Miera's testimony adequately established the first element of the criminal street gang component—that Casa Blanca Evans Street was an ongoing association involving three or more participants with a common name or symbol." However, in his reply brief, he contends that "[t]he characteristics of Casa Blanca or Casa Blanca Riva . . . do not satisfy the requirements of the plain language of section 186.22 for an organization to be considered a criminal street gang" because CB or CBR is split up into three separate groups. We disagree. The fact that CB or CBR has separate cliques is a distinction without a difference. The US military also has separate subsets, Army, Navy, Marines, and Air Force.

such that they should be treated as a whole in determining whether CBR constitutes a criminal street gang."

"Evidence of gang activity and culture need not necessarily be specific to a particular local street gang as opposed to the larger organization. [Citations.] This does not mean, however, that having a similar name is, of itself, sufficient to permit the status or deeds of the larger group to be ascribed to the smaller group." (*People v. Williams* (2008) 167 Cal.App.4th 983, 987.)

Here, Detective Miera testified that CBR is the umbrella organization under which Evans Street, First Street, and Originales exist. Although Evans Street and First Street are rivals, members of both cliques are considered to be members of CBR, and members of all three cliques have the same tattoos. Although minor is considered to be a member of Evans Street, he identifies himself and admits to being a member of CB or CBR. He has been seen displaying CB hand signs (a common sign for CBR), wearing clothing identifying himself with CB, and he has tattoos on his knuckles that say "CB" and "Casa." Likewise, other Evans Street members have been seen displaying CBR hand signs.

According to the record before this court, the three cliques exist as a collective organization under CBR. Members of each clique identify themselves as members of CBR, display hand signs identifying themselves as CBR members, and have tattoos that also identify themselves with Casa Blanca. Given this evidence, the activities of all CBR members should be considered when determining whether CBR is a criminal street gang.

Given Evans Street's attachment to CBR, CBR may be considered in assessing minor's claim of evidentiary insufficiency. (*People v. Ortega* (2006) 145 Cal.App.4th 1356-1357 [prosecution is not required to prove local subsets are criminal street gangs].)

2. Primary Activities

The "primary activities" element requires proof of one or more of the offenses listed under section 186.22, subdivision (e), and the court must instruct which of the listed crimes are alleged to be primary activities. (See CALCRIM No. 1401.) "Sufficient proof of the gang's primary activities might consist of evidence that the group's members *consistently and repeatedly* have committed criminal activity listed in the gang statute." (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 324 (*Sengpadychith*).) The testimony of a gang expert alone may be sufficient to support a true finding on a gang enhancement, but only where that testimony is supported by an adequate foundation. (*Alexander L.*, *supra*, 149 Cal.App.4th at pp. 611-614.) Minor maintains that the testimony of Detective Miera "was too abbreviated and conclusory to constitute substantial evidence." When asked about CRB's primary activities, Detective Miera said, "From the investigations, I've been familiar with and assisted in, assaults, violent assaults, both with firearms and other weapons, such as bats and knives." Minor argues that this testimony is similar to that in *In re Alexander L.*, and thus, is insufficient to establish a proper foundation for concluding that one of CBR's primary activities was one or more of the statutorily enumerated crimes. We find substantial evidence was adduced below to conclude that

CBR had as one of its primary activities the commission of one or more of the statutorily enumerated crimes.

In *Sengpadychith*, the court concluded that the primary activities prong may be met by expert testimony. The court specifically approved the use of expert testimony upon personal experience: "Also sufficient might be expert testimony, as occurred in [*People v.*] *Gardeley* [(1996)] 14 Cal.4th 605 [(*Gardeley*)]. There, a police gang expert testified that the gang of which defendant Gardeley had for nine years been a member was primarily engaged in the sale of narcotics and witness intimidation, both statutorily enumerated felonies. [Citation.] The gang expert based his opinion on conversations he had with Gardeley and fellow gang members, and on 'his personal investigations of hundreds of crimes committed by gang members,' together with information from colleagues in his own police department and other law enforcement agencies. [Citation.]" (*Sengpadychith*, *supra*, 26 Cal.4th at p. 324.)

In *Alexander L.*, the court looked at a number of authorities on the "criminal gang" prong of the gang enhancement statute, distilling therefrom the principle that an adequate foundation for establishing that a gang's primary activities concerned criminal conduct required something more than the mere testimony by a police officer of nonspecific hearsay evidence. (*Alexander L.*, *supra*, 149 Cal.App.4th at pp. 611-614.) It noted that in *Gardeley*, where the testimony was found sufficient, the officer testified that he had personal knowledge of the gang's activities via his own investigations and discussions with the defendants and other gang members. (*Alexander L.*, *supra*, at p. 613.) It

concluded that the evidence in its own case, consisting solely of a gang expert's testimony derived from unspecific hearsay sources that he knew of the group's participation in a number of crimes, was "closer to the conclusory, insufficient evidence presented in *In re Nathaniel C.* [(1991)] 228 Cal.App.3d 990 and *In re Leland D.* [(1990)] 223 Cal.App.3d 251, than it [was] to the acceptable evidence offered in *Gardeley*, *supra*, 14 Cal.4th 605." (*Id.* at p. 614.) It therefore reversed the gang enhancement. (Id. at p. 615.)

Here, we find the facts more akin to those found sufficient in *Gardeley* than those found insufficient in *Alexander L.* Detective Miera established his qualifications as a gang expert. He explained that he had been assigned to the gang unit as a detective for the past seven years, and that as a police officer he had been assigned to the gang unit as well. He stated that on a daily basis he speaks to gang members, he has several informants he relies upon to give him information about gang activity in Riverside, and that he has interviewed hundreds of gang members. He testified that he has investigated hundreds of gang cases and is familiar with several Riverside gangs, including CRB. He has been familiar with the Evans Street gang since he was hired, because his field training took place on its turf. Specifically, he testified that he has had "numerous investigations involving members of Casa Blanca Riva" and has spoken to numerous members of both sides of CBR." He has had numerous investigations involving members of Evans Street; the investigations pertained to assaults, possession of weapons, robberies, and shootings. He and his partner were patrolling the Villegas Park "due to an increase of gang activity

between Evans and First Street side." They spoke with many juveniles, including minor. Based on the investigations with which he was familiar, Detective Miera opined that one of the primary activities of Evans Street was assault. Thus, the detective's opinion was based on his substantial personal experience with the gang.

3. Pattern of Criminal Activity

"In addition to proving the gang's primary activities consisted of the enumerated criminal acts, the prosecution must also demonstrate a pattern of criminal activity. '[A] gang otherwise meeting the statutory definition of a "criminal street gang" . . . is considered a criminal street gang under the [Street Terrorism Enforcement and Prevention (STEP)] Act only if its members "individually or collectively engage in or have engaged in a pattern of criminal gang activity" [citation] by "the commission, attempted commission, or solicitation of *two or more*" . . . of the statutorily enumerated offenses within the specified time frame [citation].' [Citation.]" (*Alexander L., supra,* 149 Cal.App.4th at p. 611.) Minor contends the evidence is insufficient to show that members of Evans Street gang engaged in a pattern of criminal gang activity. Specifically, minor notes Detective Miera testified that Jesus Lopez committed the crime of robbery on May 16, 2006, and Daniel Avila committed the crime of assault with a deadly weapon on April 8, 2007. However, minor argues that the detective failed to offer any evidence that either of these individuals was a member of Evans Street. Instead, minor claims the detective testified that they were members of Casa Blanca or Casa Blanca Riva, and that a member of Casa Blanca or Casa Blanca Riva is not necessarily a

member of Evans Street. Given the detective's testimony, minor argues there is insufficient evidence to support a finding that Evans Street engaged in a pattern of criminal gang activity. We disagree.

As the People point out, the names Casa Blanca and Casa Blanca Riva are used interchangeably to identify CBR members. Minor himself claimed to be a Casa Blanca and Casa Blanca Riva member. Evans Street is a clique of CBR and exists only because CBR exists. Nonetheless, minor argues that if Lopez and Avila were members of a rival clique within CBR, then their crimes should not be used against Evans Street. To accept such argument would mean that this court would have to disregard the existence of the umbrella organization, CBR. To do so would defy logic. But for CBR, Evans Street does not exist. Thus, we agree with the People. Even if Lopez and Avila were members of a rival clique, they (like minor) were also members of CBR. As such, their offenses were admissible to prove that CBR is engaged in a pattern of criminal activity. (*In re Nathaniel C.*, *supra*, 228 Cal.App.3d at p. 1004.) This evidence provides sufficient support to find that Evans Street engaged in a pattern of criminal gang activity.

Notwithstanding the above, minor contends there was no showing that he committed the offense with the specific intent to promote, further, or assist the criminal conduct by the gang. It appears that minor is claiming there was insufficient evidence of the specific intent element, as opposed to the benefit/direction/association element. We reject his contention.

"[I]ntent to *benefit* the gang is not required. What is required is the 'specific intent to promote, further, or assist in any criminal conduct by gang members . . . .'" (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198.) Thus, the specific intent element is satisfied if minor had the specific intent to "'promote, further, or assist'" CBR gang's criminal conduct. (*People v. Romero* (2006) 140 Cal.App.4th 15, 20.)

Here, there was evidence that minor intended to commit the charged offense to promote, further, or assist CBR. By committing an assault with a deadly weapon in his gang's territory, minor was able to show CBR's violent tendency, earn respect, and help CBR control its turf. Further, committing the offense instilled fear in the community, which would assist in facilitating future crimes in the area by fellow gang members. Moreover, minor was associating with gang members at the time of his offense, as evidenced by the fact that he came out of a gang member's home and ran to it for safety thereafter. All of this evidence created a reasonable inference that minor had the specific intent to assist criminal conduct by his fellow gang members. (See *Morales*, *supra*, 112 Cal.App.4th at p. 1198.)

IV. MAXIMUM TERM OF CONFINEMENT

At the disposition hearing, minor was declared a ward of the court, placed on probation, and released to the custody of his mother. Additionally, the court declared the maximum term of confinement at nine years two months. On appeal, minor claims the court was not authorized to set the maximum term of confinement because he was released to the custody of his mother. (Wel. & Inst. Code, § 726, subd. (c).) We agree.

Welfare and Institutions Code section 726, subdivision (c), provided that when a minor is removed from the physical custody of his parent or custodian as a result of criminal violations sustained under Welfare and Institutions Code section 602, "the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense . . . ." (Wel. & Inst. Code, § 726, subd. (c).) Here, minor was not removed from the physical custody of his mother but was placed on home probation. The statute does not authorize the juvenile court to specify a maximum term of confinement, and that term should be stricken from the court's minute order. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

V. DISPOSITION

The maximum confinement term set by the court is stricken. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
J.

We concur:

RAMIREZ
P.J.

MILLER
J.